

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)	
)	WC Docket No. 02-80
Winstar Communications, LLC)	
Emergency Petition for Declaratory Ruling)	
Regarding ILEC Obligations to)	
Continue Providing Services)	
)	
Verizon Petition for Declaratory Ruling Regarding)	
CLEC Obligations to Cure Assigned Indebtedness)	

REPLY COMMENTS OF WINSTAR COMMUNICATIONS, LLC

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May 17, 2002

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Winstar Communications, LLC (“IDT Winstar”) hereby submits its Reply Comments in the above-captioned docket pursuant to the Federal Communications Commission’s May 3, 2002 *Public Notice*.¹

I. INTRODUCTION

Given the numerous opportunities to submit written comments on these issues, the record is clear as to the positions of the respective parties. There exists no need to enlarge the record with yet more of the same discussion and there is no need for IDT Winstar to submit an extended reply. IDT Winstar has alerted the Commission to the harmful effects of the RBOC threats and

¹ “Wireline Competition Bureau Seeks Comment on Verizon’s Petition for Declaratory Ruling Regarding ILEC Obligations To Continue Providing Services,” WC Docket No. 02-80, *Public Notice*, DA 02-1017; (rel. May 3, 2002).

the current uncertainty surrounding the Commission's response to those threats² making it evident that public interest considerations strongly counsel a prompt decision.

II. THE COMMISSION MUST REMAIN FOCUSED ON THE COMMUNICATIONS ACT AND THE FUNDAMENTAL PRINCIPLES REFLECTED THEREIN.

Verizon's Counter-Petition should be denied. It poses questions far too general for the Commission to respond with a declaratory ruling. Moreover, notably absent from Verizon's Counter-Petition is a single cite or even a vague reference to a provision in the Communications Act. This is hardly surprising. Verizon's Counter-Petition does not seek guidance "under the Communications Act" -- it effectively seeks a declaration that the Communications Act is inapplicable in a bankruptcy context. In similar fashion, the RBOC comments in support of Verizon's Counter-Petition arduously pronounce inapplicable bankruptcy principles, argue rejected bankruptcy equities, seek a distortion of the bankruptcy laws, and cite bankruptcy cases. There obviously are significant disagreements among the parties about the meaning and application of the Bankruptcy Code. But these bankruptcy law disagreements are most appropriately resolved (indeed, have been or are being resolved) by a bankruptcy court.

The Commission need only address the Communications Act issues raised by IDT Winstar's Petition. The RBOCs' positions before the bankruptcy court would not be eroded by the rulings under the Communications Act that IDT Winstar seeks from the Commission -- though indeed they might be reduced to the position of ordinary creditors who do not exercise monopoly control over essential facilities and who are not, for the most part, competitors of the

² See Reply of Winstar Communications to Winstar's Emergency Petition at 20 (filed May 3, 2002). In its Comments on the Counter-Petition, SBC offers a weak procedural objection to the Commission's invalidation of RBOC tariff provisions claiming that it "is aware of no instance in which the Commission has invalidated a tariff through a declaratory ruling." SBC Comments at n.20 (filed May 13, 2002). SBC apparently overlooked the extensive footnote 36 in Winstar's Reply on the original Petition that offers three examples of the Commission doing just that (and, in one instance, receiving an affirmance from the Court of Appeals for the D.C. Circuit).

debtor and the buyer of a debtor's assets. Instead, the RBOCs press for release from their most fundamental obligations under the Communications Act (through a non-existent pre-emption in the Bankruptcy Code) in order to affect a superior position *vis-à-vis* other creditors of Old Winstar. The RBOCs possess a monopoly over inputs absolutely essential to IDT Winstar's ability to provide uninterrupted service to Old Winstar's customers. The RBOCs are attempting to use this power -- by threatening to withhold provisioning those essential inputs -- to literally force an assumption of Old Winstar's indebtedness if they could only escape the yoke of their Communications Act obligations. What the RBOCs seek is a "win-win" situation that no other creditor has an opportunity to receive -- if excused from their obligation to provide service they can either compel cure or eliminate a competitor.³

There is a reason why the Communications Act imposes interconnection and other competitively neutral service obligations on the RBOCs. The principles contained in the Communications Act were designed to restrict the unbridled and tenacious exercise of monopoly power in order to protect customers and enhance the public interest. The amendments contained in the Telecommunications Act of 1996 were enacted precisely to ensure that ILEC market power would not be exploited to impose entry barriers to new carriers. The RBOCs seek a profound and revolutionary decision from the FCC: they demand abandonment of the most basic principles contained in the agency's organic statute.

IDT Winstar seeks from the Commission a declaratory ruling limited to *communications law* that, at its essence, involves a confirmation that those fundamental principles will not be abandoned. When the rhetoric is cleared away, the issues are very clear and straightforward:

³ The Comments filed by Z-Tel Communications in response to the Verizon Counter-Petition provide a very clear and compelling discussion of the special rights that Verizon is seeking. Comments of Z-Tel Communications, Inc., WC Docket No. 02-80, at 2-5 (filed May 13, 2002).

- (1) Does the Commission believe it to be just and reasonable under the Communications Act for incumbent local exchange carriers to withhold service requested by a new carrier (and essential to serve subscribers who have chosen to obtain their service from that new carrier pursuant to the Commission's carrier change rules) as a result of that new carrier's refusal to pay the bills of another carrier; and
- (2) Does the Commission believe it to be just and reasonable under the Communications Act for incumbent local exchange carriers to provision service in inefficient or incompetent ways, particularly when the method of service provisioning entails the disconnection of service to end users and unnecessarily raises the costs of competitors?

As unfortunate as it is that such obvious questions need even be asked, the very clear answer to both questions is no.

III. CONCLUSION

For the foregoing reasons, IDT Winstar respectfully urges the Commission to deny Verizon's Counter-Petition and promptly grant IDT Winstar's Emergency Petition for Declaratory Ruling.

Respectfully submitted,

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May 17, 2002

CERTIFICATE OF SERVICE

I, Carl Wolf Billek do hereby certify that on this 17th day of May 2002, I caused true and correct copies of the following Comments of Winstar Communications, LLC to be served via Overnight Mail upon the following persons:

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